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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/160,503	09/24/1998	RICHARD D. CAPPELS SR.	P2267/PA1021	6429

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 09/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance  
With 37 CFR 1.192(c)**

Application No.

09/160,503

Applicant(s)

CAPPELS ET AL.

Examiner

Thomas J Joseph

Art Unit

2174

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 05 March 2001 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
  - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
  - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Please see attachment.

**NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR**

**1.192(c)**

1. The brief does not contain, for each rejection under 35 U.S.C. 102, an argument which specifies the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

The Appellant presents arguments for claims 1, 3, 4, 21, 23, 24, 44, and 45 while the Appellant states that claims 1, 3, 4, 21, 23, and 24 are not under appeal. The Appellant should only present arguments for claims that are actually under appeal.

The brief does not contain a concise statement of the issues presented for review as required by 37 CFR 1.192(c)(6). Other Activity that May Affect This Appeal is the lack of a concise statement regarding the current status of the claims. The Appellant states that claims 1 – 4, 21 – 24, 42, and 43 will be canceled. Since Appellant states that these are canceled, there is no need to provide arguments for these claims. The Examiner reminds the Appellant that the United States Patent Trademark Office (USPTO) dismissed the petition (paper #20). The Examiner recommends that the Appellant present arguments for claims as they stand before the petition.

Further, The Appellant presents Groups I, II, and III. The Appellant also presents subgroups within each of the said Groups. An example of the subgroups is claim 44 corresponding to subgroup 1a while claim 45 corresponds to subgroup 1b. The Examiner interprets each subgroup as a distinct Group. The Examiner asserts that these groupings are unclear. It is unclear to the Examiner how the Appellant is

grouping the claims. Such consideration will cause confusion both to the Examiner and the Board of Appeals.

The brief does not contain a complete copy of the claims involved in the appeal in the Appendix. The said Appendix must show all claims under appeal. The Appendix must reflect the claim language that is actually under appeal.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J Joseph whose telephone number is 703-305-3917. The examiner can normally be reached Mondays through Fridays from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid can be reached on 703-308-0640. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

tjj

September 8, 2002

*Kristine Kincaid*  
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